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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS APPLICATION NO. 237 OF 2007

IN

CRIMINAL REVISION APPLICATION NO. 349 OF 2007

Central Bureau of Investigation .. Petitioner

V/s

1. Utkarsh Mehta
2. The State of Maharashtra .. Respondent

Mr.J.C. Satpute for the petitioner.

Mr.Y.N. Shingnapurkar for the respondent no.1.

Mr.K.V. Saste, A.P.P. for the State.

CORAM : D.G. KARNIK, J.

DATE : 10TH DECEMBER 2007

P.C. :

1. Heard the learned counsel for the parties.

2. By this application, the petitioner seeks condonation of delay in filing the revision application.

3. The petitioner has given the reasons for the delay in para 2 of the application which are as follows:-

(a) On 16th August 2006, the impugned order was passed and on the same day the application for certified copy of the order was filed which was made available on 2nd November 2006 by copying section of the court.

(b) On 14th November 2006, the comments from the concerned Public Prosecutor, CBI, Mumbai were obtained. Thereafter, comments from Senior Public Prosecutor, CBI, Mumbai were obtained on 22nd January 2007 as he was busy with the sensitive matter in which investigation of the case was entrusted to CBI by the Hon'ble Court at Khairlanji, Nagpur in filing C.S. and further proceeding in the Court. On 8th February 007, only the Superintendent of Police, CBI, ACB, Mumbai could give his comments in the matter after return from his leave and thereafter on 15th February 2007 the Deputy Legal Advisor, CBI, Mumbai also gave comments in the present matter.

(c) On 15th February 2007, the DIG, CBI and on 20th February 2007 the Joint Director, CBI, Mumbai gave their comments and the matter was sent to the office of the Director of Prosecution, CBI, New Delhi for further immediate action.

(d) On 27th February 2007, the Additional Legal

Advisor, CBI, New Delhi gave his comments in the matter.

(e) On 2nd March 2007, the file was received by the JD (WZ), CBI, Mumbai and on the same day it was marked to the Superintedent of Police, CBI, Mumbai through DIG, CBI, Mumbai.

(f) On 12th March 2007, a letter was issued to the Ministry of Law & Justice, Mumbai for appointment of Government Counsel to file revision.

(g) On 12th April 2007, it was reported by ASI, ACB, Mumbai that Shri Manoramyan Sahu has been appointed as Government Counsel in the matter.

(h) On 25th April 2007, a letter was sent to the Ministry of Law & Justice, Mumbai with a request to nominate another counsel as counsel Shri Sahu was away from Mumbai for his urgent commitments.

(i) On 15th May 2007, Ministry of Law & Justice, Mumbai nominated another counsel Shri Satpute in the matter.

(j) On 29th May 2007, the Government Counsel submitted the draft Revision Application along with condonation of delay application to CBI, ACB, Mumbai for

approval and legal vetting.

(k) On 11th June 2007, approval to the draft Revision Application along with the condonation of delay application was received from the Head Office, New Delhi.

4. Learned counsel for the applicant also produced for the perusal of the court the relevant copies of the documents in support of the application. The respondent no.1. has not filed any affidavit in reply denying the aforesaid factual position.

5. Learned counsel for the respondent no.1, however, submitted that there was no sufficient cause for delay. Relying upon a decision of the Supreme Court in Union of India v. Tata Yodogawa Limited, reported in 1988 (38) E.L.T. 739, learned counsel for the respondent no.1 submitted that the delay should not be condoned. In para 4 of the decision, the Supreme Court held that the government being impersonal takes longer time in filing the appeals/petitions than the private Bodies or the individuals. However, even giving that latitude there must be some way or attempt explaining the cause for delay. After examining the facts, the Supreme Court held that in that case there was no sufficient cause to explain the cause of delay. Thus,

the Supreme Court itself has held that the government being impersonal, it takes longer time than private bodies or individuals in filing the appeals/petitions and latitude must be given to the government. Further finding that the delay was sufficiently explained was a finding on facts of that case. In the present case, the facts disclosed sufficiently explanation the delay. Initially, there was delay in receiving the certified copy. Thereafter some time was taken for obtaining necessary comments of the officers concerned. Thereafter, the counsel engaged for filing the revision application went on leave and returned the papers and, therefore, new counsel was required to be engaged. This sufficiently explains the delay.

6. In the facts and circumstances of the case, I am satisfied that the delay can be condoned. However, taking into consideration that the delay is substantial and of nearly 8 months, the applicant will have to be directed to pay some costs. In the circumstances, the application for condonation of delay in filing the revision application is allowed, subject to the applicant paying costs of Rs.2,000/- within 4 weeks. Out of the costs of Rs.2,000/-, Rs.1,000/- shall be paid to the respondent no.1 and Rs.1,000/- shall be paid to the Maharashtra State Legal Services Authority. If the costs are not paid within the stipulated period, this

application shall stand dismissed without further reference to the Court.

(D.G. KARNIK, J.)